

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,383

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is a thirty-seven year-old woman who has a G.E.D. and who recently attended a paralegal training institute for about six months. Her last job was as a chambermaid in a hotel, a position which required her to stand, walk, stoop and bend continuously and required her to lift ten pounds at a time. She has also worked as a pants presser which required all day standing.
2. In early July of 1993, the petitioner twisted her knee while hiking. Her knee became quite swollen and she was unable to walk flatfooted. She tried to return to her job but was unable to do it. She thereafter underwent some physical therapy sessions but felt that it made her worse. It was determined that she had some serious tears in the cartilage in her knee and she was scheduled for corrective surgery in October. About that time, she dropped out of her paralegal course.
3. Following the surgery, the petitioner was able to walk flat-footed but the knee was still somewhat stiff and to this day she continues to experience intermittent pain and swelling. She and her doctor feel that she could benefit from further reconstructive surgery and the petitioner is considering scheduling such surgery if she can find a way to pay for it. She is doing some home physical therapy sessions but cannot afford to do more intensive therapy due to the expense. Presently, the petitioner is able to stand for only forty-five to sixty minutes at a time without swelling in her knee. If she sits for a long time, more than an hour, she needs to move around to relieve her pain. She takes Ibuprofen three to four times per day which usually helps to relieve her pain.

4. The petitioner is still able to care for her apartment, cook and pursue her hobbies of crocheting and reading. She can walk around her apartment and outside on flat surfaces for short periods of time, although sometimes her leg gets stiff and must be lifted to facilitate movement. She is unable to do any heavy work, like scrubbing walls and floors, and cannot lift any heavy objects. Her husband does their laundry and grocery shopping.

5. The petitioner's treating physician reported in late December that the petitioner is unable to lift and carry objects weighing more than ten pounds, is limited in her ability to stand, walk or sit for long periods of time, and limited in her ability to push or pull with her legs. She cannot climb, stoop, kneel, crouch, or crawl and is limited in her ability to reach. Her physician states, "She has an ACL tear which makes her leg unstable. She is unable to do activities of daily living without reconstruction. [Petitioner] had a cartilage tear of the right knee that was repaired 10-4-93." It was her impression that the petitioner does not suffer from any mental impairments.

6. A mental status examination in September of 1993, found that the petitioner has suffered from a long-term recurrent low-level depression sometimes accompanied by suicidal ideation which could be, but never has been, treated by therapy. Neither the petitioner nor the mental health reviewer described her condition("dysthymia") as having had an impact on her ability to work in the past or as having a significant current impact on her ability to function in a work setting.

7. Based on the above, it is found that the petitioner cannot return to her former employment and is restricted due to her knee injury to work which involves carrying or lifting no more than ten pounds at a time. She is able to sit as long as she can change positions every hour or so. She can stand for periods of up to an hour and can walk for short periods of time on flat surfaces.

ORDER

The Department's decision is affirmed.

REASONS

Medicaid Manual Section M 211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or had lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The petitioner does not have the physical ability to do her former work. The burden, therefore, shifts to the Department to show that there is other work which the petitioner can perform in the economy. The evidence shows that the petitioner does have some residual ability to function as described in paragraph seven above. Given those abilities, it must be concluded that the petitioner meets the definition of a person capable of "sedentary work" as that term is described in the regulations:

(a) Sedentary work.

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 C.F.R. § 416.967

Persons who are capable of "sedentary work" only, may or may not be disabled under Social Security decisional rules depending on their age, level of education and former work experience. The petitioner has performed unskilled work in the past, which is a negative factor for her. However, the petitioner is also a "younger individual" and is a high school graduate, both positive factors in determining her ability to obtain substantial gainful employment. Under the Medical-Vocational Guidelines, a younger individual, with a high school diploma and an unskilled work history is not disabled. 20 C.F.R. § 404, Subpart P, Appendix II, Rule 201.27.

The Department's decision that the petitioner is not disabled under the definition found in the Medicaid program is correct because the regulations consider her capable of some work. The petitioner is encouraged to apply for assistance through the Vocational Rehabilitation program to see if she might be eligible for work readjustment or medical programs aimed at returning her to employment.

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